IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 832 OF 2007

Structures Steel (H.U.F.) ..Applicant
(Org.Complainant)

Vs.

R.S. Lath Education Trust and ors. ..Respondents

Mr. A.A. Kumbhakoni with Mr. T.D. Deshmukh for applicant.
Mr. V.A. Thorat, Senior Counsel with Mr. M.M. Sathaye for respondent nos.1 to 3.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : September 27, 2007.

Pronounced on : October 09, 2007.

P.C.:

1. Heard the learned counsel for the respective parties. This is an application for special leave to appeal against the order of acquittal passed by the learned Judicial Magistrate, First Class, Court No.3 at Nashik on 20/1/2007 in R.C.C. No. 18 of 2006 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act).

2. The said complaint was filed on account of dishonour of Cheque No. 167547 dated 25/4/2005 and in the sum of Rs.48,01,029/- drawn over the Punjab National Bank. The statutory demand notice was issued on 23/11/2005 and it was received by the accused on 25/11/2005 and as the accused failed to pay the amount of the dishonoured cheque within 15 days, the complaint came to be filed. The complainant had filed affidavit for examination-in-chief at Exh.18 and he was subjected to cross-examination by the learned Advocate of the accused. The dishonoured cheque was at Exh.22 and the memos of the respective banks was at Exhs. 25 and 44, whereas the statutory notice was at Exh.26 and the acknowledgement receipts were at Exhs.27(1) to 27(4). The reply to the statutory notice was given on 7/12/2005 at Exh.28. On examination of the oral and documentary evidence, the trial court noted that the cheque at Exh.25 was dated 25/4/2005, drawn by the accused in favour of the complainant and the complainant had deposited the same for the first time on 25/10/2005 and, thus, after the expiry of the period of six months. Witness No.2 was Mr. Bhalchandra Panabh Inamdar, an employee of the Rupee Co-op. Bank where the complainant had deposited

the cheque, whereas Witness No.3 was Mr. Anant Vinayak Ganvire, an employee of the Punjab National Bank. He had brought on record the statement of the account of the Dream Constructions at Exh.47 and the register of cheque return at Exh.48. Witness No.2 Bhalchandra Inamdar admitted in his cross-examination that the subject cheque was sent for clearing by his Bank on 25/10/2005 and Witness No.3 Anant Ganvire admitted, during his cross-examiantion, that on 25/10/2005 the said cheque was outdated or stale and it did not remain a negotiable instrument, though he admitted that the cheque was dishonoured with remarks "insufficient funds". The trial court referred to the provisions of Section 138 of the Act and it observed that the cheque was required to be presented within six months from the date on which it was drawn or within the period of its validity, whichever was earlier and the period of six months shall be calculated from the date appearing on the cheque and held that the cheque dated 25/4/2005 should have been presented to the drawer bank on or before 25/10/2005. It clearly mean that it was presented beyond the period of its validity and the complainant failed to produce any evidence showing that the cheque was

presented in the drawee bank within the validity period of six months. The complaint came to be dismissed mainly on this ground.

3. Mr. Kumbhakoni the learned counsel for the applicant - original complainant urged before me that the period of validity of six months in respect of a cheque must be counted from the next day i.e. if the cheque was dated 25/4/2005, the period of six months ought to be counted from 26/4/2005 and if so counted, the receipt of the cheque by the drawee bank on 25/10/2005 was within the validity period of six months. He referred to the provisions of Section 9 of the General Clauses Act, 1897 and submitted that the commencement of the validity period ought to be counted by excluding the first day i.e. 25/4/2005. In support of these contentions he has placed reliance on the following decisions:-

(a) Haru Das Gupta vs. The State of West Bengal [AIR 1972 SC 1293].

(b) Tarun Prasad Chatterjee vs. Dinanath

Sharma [(2000) 8 SCC 649].

(c) Saketh India Ltd. and ors. vs. India Securities Ltd. [(1999) 3 SCC 1].

(d) Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd. [(2001) 3 SCC 609].

. He also placed reliance on the Full Bench decision of the Gujarat High Court in the case of Patel Dinneshkumar Shivram Somdas vs. Patel Keshavlal Mohanlal and ors. [2000 (Supp.) Bom.C.R. 365]. It was contended by Mr. Kumbhakoni that the day of the cause of action has to be excluded for counting of period of six months and in the instant case the day of cause of action ought to be treated as 25/4/2005 and the same has to be excluded, meaning thereby that the period of six months of the validity of the cheque ought to be counted from 26/4/2005 and if so counted, deposit of the cheque with the drawee bank on 25/10/2005 would be within the validity period of six months.

4. Mr. Thorat, the learned Senior Counsel, on the other hand, has supported the view taken by the trial court. He has placed reliance on the following decisions:-

(a) Jiwanlal Achariya vs. Rameshwarlal Agarwalla [AIR 1967 SC 1118].

(b) Anil Kumar Sawhney vs. Gulshan Rai [(1993) 4 SCC 424].

(c) Ashok Yeshwant Badave vs. Surendra Madhavrao Nighojakar [(2001) 3 SCC 726].

. Mr. Thorat also relied upon a decision of the Kerala High Court in the case of Muhammed Kunhi vs. Janardhanan [DCR 320].

5. In the case of Someshwar Bapurao Nilakhe vs. Nivritti Baburao Gholave [AIR 1973 Bombay 147], on which Mr. Kumbhakoni placed reliance, this court held that,

> "Since Section 18(1) of the Limitation Act provides that the fresh period of limitation shall be computed 'from' the time when the acknowledgment was so signed, in view of the provisions of Section 12 (1) of the Limitation Act and of Section 9 (1) of the General Clauses Act, it is clear that the day on which the acknowledgement is made will have to be excluded in computing the period of limitation of three years."

. As per Mr. Kumbhakoni this analogy is squarely applicable to a cheque which was dishonoured or held to have been submitted beyond the validity period of six months. In the case of Anil Kumar Sawhney (Supra), the Supreme Court in para 12 observed as under:-

> "Sections 5 and 6 of the Act define "Bill of Exchange" and "Cheque". A "Bill of Exchange" is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand. A "cheque" on the

other hand is a bill of exchange drawn on a bank by the holder of an account payable on demand. Thus a "cheque" under Section 6 of the Act is also a bill of exchange but it is drawn on a banker and is payable on demand. It is thus obvious that a bill of exchange even though drawn on a banker, if it is not payable on demand, it is not a cheque. A "postdated cheque" is only a bill of exchange when it is written or drawn, it becomes a "cheque" when it is payable on demand. The postdated cheque is not payable till the date which is shown on the face of the said document. It will only become cheque on the date shown on it and prior to that it remains a bill of exchange under Section 5 of the Act. As a bill of exchange a postdated cheque remains negotiable but it will not become a "cheque" till the date when it becomes "payable on demand"."

6. As held by the Apex Court in the case of Anil Kumar Sawhney (Supra) and Shri Ishar Alloy Steels Ltd. (Supra), an offence to be made out under the

substantive provisions of Section 138 of the Act, it is mandatory that the cheque is presented to "the bank" within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. It is the cheque drawn which has to be presented to "the bank" within the period specified therein. When a post-dated cheque is written or drawn, it is only a bill of exchange and as such provision of Section 138(a) are not applicable to the said instrument. The post-dated cheque becomes a cheque under the Act on the date which is written on the said cheque and the six months' period has to be reckoned, for the purposes of Section 138 (a) of the Act, from the said date. Section 138 of the Act creates an offence and the law relating to the penal provisions has to be interpreted strictly so that no-one can ingeniously or insidiously or guilefully or strategically be prosecuted. Though the cheque issued can be encashed i.e. it can be treated as negotiable instrument on the date inscribed on it, that, however, does not mean that the cheque is always to be presented to the drawer's bank on the day it is issued. The payee of the cheque has the option to present the cheque in any bank including the

collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. This observation made by a three Judge bench in Shri Ishar Alloy Steels Ltd. clearly re-affirms that the period of six months has to be counted from the date which is inscribed on it. In the instant case, if the cheque was dated 25/4/2005, undoubtedly the payee could have encashed the same on the very same day, if it was presented during the banking hours and, therefore, there is no justification in claiming that the first of the dates or the date written on the cheque was required to be excluded for counting the period of six months. In defence of this, Mr. Kumbhakoni submitted that the cheque could be issued in the night or after the banking hours and, therefore, it could be impossible to encash it on the date which is inscribed on it. Undoubtedly such a case or defence was not made out before the trial court by the complainant and, therefore, this hypothetical submission cannot support the claim that the period of six months ought

to have been counted from 26/4/2005, in the instant case.

7. In the case of Ashok Badave (Supra), the question that fell for consideration before a three Judge bench was, "whether period of six months for presentation of cheque to the banker, as required under proviso (a) to Section 138 of the Act should be reckoned from the date mentioned on the face of the cheque or a date previous to that when it was made over by the drawer to the drawee."

. Their Lordships referred to the earlier view of a two Judge bench in the case of Anil Kumar Sawhney (Supra) and re-affirmed that the period of six months for the cheque to remain as a negotiable instrument has to be counted from the date it bears. The propositions advanced by Mr. Kumbhakoni are mostly the propositions for counting the period of limitation and the same propositions cannot be made applicable for counting the validity period of six months for the cheque to remain as a negotiable instrument. It is thus clear that the view taken by the trial court does not require reconsideration at the hands of this court

and hence there is no case made out to grant special leave to appeal.

8. In the premises, leave to appeal is refused and the application is rejected.

(B.H. Marlapalle,J.)